

UNAPPROVED MINUTES  
CITY OF MILPITAS

Minutes: Regular Meeting of Milpitas City Council (Including Joint Meeting  
with Redevelopment Agency)  
Date of Meeting: April 6, 2004  
Time of Meeting: 6:00 p.m. (Closed Session)  
7:00 p.m. (Regular Session)  
Place of Meeting: City Hall Council Chambers, 455 E. Calaveras Blvd.

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**ROLL CALL**

Mayor Esteves called to order the regular meeting of the Milpitas City Council at 6:00 p.m. Present were Mayor Esteves, Vice Mayor Dixon, and Councilmembers Livengood (arrived 6:01 p.m.) and Polanski. Councilmember Gomez arrived at 7:00 p.m.

**CLOSED SESSION**

Mayor Esteves publicly stated the Council would convene in Closed Session to discuss the following four items listed on the agenda:

1. **CONFERENCE WITH LEGAL COUNSEL - ANTICIPATED LITIGATION**  
(Pursuant to Government Code Section 54956.9[c])  
Initiation of litigation: one case
2. **CONFERENCE WITH REAL PROPERTY NEGOTIATOR**  
(Pursuant to Government Code Section 54956.8)  
Property: City of Milpitas property (APN Nos. 2208041 and 2208003)  
Negotiating Parties: City of Milpitas and Santa Clara County  
Agency Negotiators: Thomas J. Wilson and Blair King  
Under Negotiation: Terms and conditions for sale or lease of property
3. **CONFERENCE WITH REAL PROPERTY NEGOTIATOR**  
(Pursuant to Government Code Section 54956.8)  
Property: Vacant Property N. Main Street (APN No. 2208003)  
Negotiating Parties: City of Milpitas/Milpitas Redevelopment Agency  
and Kathleen Cardoza  
Agency Negotiators: Thomas J. Wilson and Blair King  
Under Negotiation: Terms and conditions for acquisition of property
4. **CONFERENCE WITH REAL PROPERTY NEGOTIATOR**  
(Pursuant to Government Code Section 54956.8)  
Property: Winsor and Rodriquez properties (adjacent to Main St. off ramp of Calaveras Blvd.) (APN Nos. 2824014, 2824020, 2824026 and 2824025)  
Negotiating Parties: City of Milpitas/Milpitas Redevelopment Agency and Winsor, Rodriquez, Garbe's Towing and Economy Towing.  
Agency Negotiators: Thomas J. Wilson/Greg Armendariz  
Under Negotiation: Terms and conditions for acquisition of property and rental interests

Mayor Esteves adjourned the meeting to Closed Session at 6:01 p.m.

The City Council meeting reconvened at 7:03 p.m. with Mayor Esteves presiding and Vice Mayor Dixon and Councilmembers Gomez, Livengood, and Polanski present.

**CLOSED SESSION  
ANNOUNCEMENTS**

There were no Closed Session announcements.

**PLEDGE**

Members of Boy Scout Troop No. 92 led the Council and audience in the Pledge of Allegiance.

**MINUTES**

MOTION to approve the City Council minutes of April 6, 2004, including joint meeting with the Redevelopment Agency, as submitted.

M/S: Gomez, Livengood.

Ayes: 5

## SCHEDULE

Councilmember Livengood requested the Bay Area Water Supply and Conservation Agency Board of Directors meetings, which he attends, be included on the schedule for the third Thursday each month at 7:00 p.m. Councilmember Gomez added the meeting of the Martin Luther King/Cesar Chavez Subcommittee on April 22 at 6:00 p.m.

MOTION to approve the Schedule of Meetings as amended.

M/S: Gomez, Polanski.

Ayes: 5

## PRESENTATIONS

Mayor Esteves read a Commendation recognizing Milpitas resident Steven Ybarra, a member of the United States Army, for 11 months spent in Iraq helping defend citizens and protecting against terrorism while assisting in the effort for the re-establishment of the Iraqi Government. Mayor Esteves extended the gratitude of the Council and presented the Commendation to Steven Ybarra.

Steven Ybarra thanked fellow Milpitan, his family and friends for their support, which really helped him, and thanked everyone for their patriotism. Mayor Esteves said again, we salute you and we salute your family and recognized Steven's Mom, who was present in the audience.

Mayor Esteves read a proclamation recognizing June as "Scleroderma Awareness Month" and presented it to Marina Duque. Marina Duque thanked the City of Milpitas for recognizing Scleroderma Awareness Month.

Mayor Esteves read a proclamation recognizing April 17, 2004, as "Arbor Day" in the City of Milpitas and inviting everyone to celebrate Arbor Day at the Earth Day event at Yellowstone Park and presented the proclamation to Acting Planning Director Tambri Heyden. Ms. Heyden accepted the proclamation on behalf of the Community Advisory Commission commenting this was a product on the CAC's Work Plan and they were looking forward to the event.

Mayor Esteves read a proclamation recognizing the month of April as "Young Child & Child Abuse Prevention Month" and presented it to Chrissy Rodriguez-Vigil, Preschool Program Coordinator, and Toby Librande, Child Care Coordinator.

Ms. Rodriguez-Vigil described the Children's Memorial Flag, which was brought into the Council Chambers by Van La and Aditya Ullal, members of the Youth Advisory Commission. Ms. Rodriguez-Vigil introduced 13-year-old Leslie Sherman from the South Bay Kids/South Bay School of Music, who sang two solos, "The Greatest Love of All" and "Amazing Grace."

Ms. Rodriguez-Vigil commented that tip sheets on child abuse awareness had been distributed to everyone, more would be available at the Community Center and City Hall, and information was also available on the City's web site.

Mayor Esteves thanked everyone for their participation and also expressed appreciation to all the childcare providers.

## CITIZENS FORUM

Mayor Esteves invited members of the audience to address the Council on any subject not on the agenda, requesting that remarks, including any visual or technology-assisted presentations of any kind, be limited to two minutes or less, and noted that the City Clerk would be using the timer and when the red light at the podium came on, two minutes would be up.

Marilyn Hay announced the Friends of the Library Book Sale on Friday, April 23, 7-9 pm (members only), Saturday, April 24, 10-5 pm, and Sunday, April 25, 11-3 pm and encouraged everyone to come.

Debbie Giordano announced that April 9th would be the 60th anniversary of the Bataan Death March and felt that it should be recognized and honored in Milpitas in a special way.

Rob Means read from an article in the newspaper about State roads being the worst in the Nation and expressed concern that as the streets in Milpitas age there be adequate funding to maintain the streets.

Craig Ranker invited everyone to attend the three remaining workshops (April 7 & 22 and May 5 at City Hall) to help create guidelines for an ethics policy.

Frank De Smidt announced the Chamber's next "Good Morning Milpitas" on Friday, April 16, 7:30 am at the Embassy Suites Hotel with Carl Guardino as the speaker and the State of the City Address at City Hall on Wednesday, April 21, at 6:00 pm.

Mr. Swanson commented on the proposed changes to the Town Center and expressed his fear that the huge store will uproot the very heart of this town.

## ANNOUNCEMENTS

Councilmember Polanski thanked everyone involved with the opening day ceremonies for Milpitas Little League North; reported the 50<sup>th</sup> Anniversary Committee met and was looking at participating in various events throughout the year such as Earth Day, Global Village, July 4<sup>th</sup> activities, and was working on a time capsule to include artifacts and memorabilia from this year that would be buried January 26, 2005 and anyone with ideas or things that should be included should contact Cindy Maxwell at City Hall.

Vice Mayor Dixon reported that on March 17, she and the Mayor represented the City and the VTA at the official opening of the Dixon/I-880 improvements, which came in under budget and on time; on March 18, the School District/City Communications Committee discussed a proposed to have the Resource Officer currently at Russell and Rancho Schools spend some quality time during the day at Cal Hills, discussed a proposal for a reading program for pre-kindergarten children, and discussed a proposal for a college satellite placement at Milpitas High School through an agreement with San Jose State and San Jose City College; and on March 18 she attended the CEPAC meeting and extended congratulations to the City's Volunteer Coordinator Rosana Cacao for her hard work on the County Divergent Volunteer Program, which is a list of volunteers that will be combined with what the County is doing and one of the first of its kind. Vice Mayor Dixon further reported the successful first time ever MUSD/Foundation for Education sponsored Crab Dinner and Auction, the money was still coming in and would be used for classroom supplies, thanked Councilmember Polanski and Mayor Esteves for not only buying a ticket but serving as guest servers to the sold-out event. Vice Mayor Dixon further reported on March 20 Curtner School held its Annual International Faire and Library Commissioner Sonny Wang's daughter, who is in the second grade, performed a Chinese Opera; also on March 20, Vice Mayor Dixon said she had the honor of representing the City as Co-Host of this year's recognition of Citizen of the Year Marilyn Hay, Police Officer of the Year Henry DeKruyff, and Firefighter of the Year Steven King and extended thanks to Dem Nitafan and the Knights of Columbus for sponsoring the event; on March 25 the Santa Clara County Joint Powers Authority met to address the recent failure of Measure B to extend the current library assessment and direction was given to staff to look at possibly closing one day a week at all nine County libraries, and a few days later she met with the County Librarian and the people who put together the campaign; on April 1, the County Emergency Preparedness Council accepted the resignation of the County Emergency Director and it was announced that Milpitas Fire Chief Bill Weisgerber had been selected to serve on the County Oversight Committee for Homeland Security Task Force; on April 2 Councilmember Gomez, Mayor Esteves, and Vice Mayor Dixon unveiled the third "Art in the Park" piece at Hillcrest Park and thanked former Councilmember Jim Lawson and Elena Lawson for spearheading the project; the next art will be for Starlite Park; on April 3 Mayor Esteves and Vice Mayor Dixon attended the dedication of the Mike Harwood Training Room at Fire Station 1; and reminded everyone that on April 19, 6-8 p.m. at Weller Elementary

School, the VTA will be hosting a meeting for public input on the BART extension to Milpitas, San Jose, and Santa Clara.

Mayor Esteves congratulated the Milpitas Chamber of Commerce for its Small Business Fair at the Great Mall; reported that he attended the Talent Show sponsored by the Youth Advisory Commission; congratulated Cal Hills on its selection by the California Department of Education as a Model Continuation High School for 2004, commenting that he was proud because he was one of the mentors at the school; and congratulated City staff, reading from a letter from the Department of Housing and Urban Development stating that the Annual Community Assessment for implementing the Annual Action Plan Objectives based on the City's five-Year Consolidated Plan, Goals, and Priority Needs has the continuing capacity to implement and administer the CDBG Program. Mayor Esteves said he attended the Rainbow Theater's performance of "Chicago", several of the lead roles were performed by members of the Youth Advisory Commission, and urged everyone to attend one of the remaining performances on April 8 and 9 at 7:30 p.m. and April 10 at 3:00 p.m.

## **AGENDA**

City Manager Thomas Wilson reported that staff was requesting item 1, the public hearing on amendments to the Sign Ordinance regarding freestanding signs in the Town Center, be continued to May 4, 2004, due to an appeal just filed of the Planning Commission action regarding the Town Center. Mr. Wilson also called to the Council's attention three erroneous paragraphs on page 17 following the recommendation for item 22 that should be deleted.

MOTION to approve the agenda as amended.

M/S: Polanski, Livengood.

Ayes: 5

## **CONSENT CALENDAR**

Mayor Esteves inquired if anyone wished to make any changes to the Consent Calendar. There were no requests.

MOTION to approve the Consent Calendar, items with asterisks on the agenda, as submitted, in accordance with the staff recommendations.

M/S: Livengood, Polanski.

Ayes: 5

### **\*4. RSRAC Appointment**

Approved the Mayor's appointment of Ed Blake, Jr., to the Recycling and Source Reduction Advisory Commission for a term expiring October 2005.

### **\*6. Federal Transportation Reauthorization**

Adopted Resolution No. 7392 in Support for Federal Transportation Reauthorization.

### **\*8. Library Advisory Commission Work Plan**

Approved the 2004 Library Advisory Commission Work Plan.

### **\*10. Water Supply Assessment**

Approved Water Supply Assessment for Elmwood Residential and Commercial Project.

### **\*11. 2005 City Calendar**

Noted, receipt and filed.

### **\*14. Playground Equipment Upgrade (Project No. 5077)**

Adopted Resolution No. 7393, granting initial acceptance subject to a one-year warranty period and reduction of the faithful performance bond to \$56,067.28.

### **\*15. Cathodic Protection Systems**

Adopted Resolution No. 7394, granting initial acceptance subject to a one-year warranty period and reduction of the faithful performance bond to \$113,833.94.

**Repairs  
(Project No. 7050)**

- \*16.  
N. Milpitas Blvd.  
Median Landscape Renovations  
(Project No. 4140)** Adopted Resolution No. 7395, granting final acceptance and release of the bond.
- \*17.  
Munifinancial** Authorized the City Manager to engage the services of MuniFinancial to assist in the development of maintenance finance strategies and cost sharing spreads for the North Main Street/Library parking structure, for an amount not-to-exceed \$70,000.
- \*18.  
San Jose Water Co.  
Agreement** Approved the amendment to the agreement with San Jose Water Co., subject to approval as to form by the City Attorney.
- \*19.  
Treadwell & Rollo  
(Project No. 3394)** Authorized the City Manager to enter into the agreement with Treadwell & Rollo in the amount of \$120,000, subject to approval as to form by the City Attorney.
- \*20.  
Lowney Associates  
(Project No. 4186)** Authorized the City Manager to enter into the agreement with Lowney Associates in the amount of \$25,000, subject to approval as to form by the City Attorney.
- \*21.  
Lowney Associates  
(Project no. 6079)** Authorized the City Manager to enter into the agreement with Lowney Associates in the amount of \$115,000, subject to approval as to form by the City Attorney.
- \*22.  
Calaveras/Abel Street  
Right Turn  
(Project Nos. 8154 & 4186)** Authorized the City Manager to execute an agreement with Overland Pacific & Cutler, Inc. in the amount of \$243,000, subject to approval as to form by the City Attorney; Approved the budget appropriation of \$185,000 for the Midtown Parking Structure, Project No. 8154.
- \*23.  
Milpitas Activity Guide** Awarded the bid for the first three issues of the 2004/05 Milpitas Activity Guide to Milpitas Post Newspapers, Inc. as the lowest bidder in the amount of \$16,414.38, and authorized the City Manager to execute a contract subject to approval as to form by the City Attorney; and authorized the City manager to exercise the options for the remaining three single year options if it is in the best interest of the City at that time to do so.
- \*24.  
Traffic Signal Head Painting  
(Project Nos. 4109 & 4167)** Authorized the City Manager to execute a contract with Diaz Corporation as the only qualified contractor for painting traffic signal heads in an amount not-to-exceed \$103,550.00, subject to approval as to form by the City Attorney.
- \*25.  
Audible Pedestrian Signals  
(Project No. 4173)** Awarded the bid for the purchase of the audible pedestrian signals and ADA push buttons to the lowest bidder, Fortel Traffic, Inc. in the amount of \$16,140.08.
- \*26.  
Miscellaneous Vendors/  
Contractors** Approved the following purchase requests:
1. \$50,000.00 to Balch Petroleum to test, modify and repair seven underground fuel tanks to stay in compliance with State mandated SB989, secondary containment testing. Balch Petroleum is a sole source provider of this service in the area. This is a not-to-exceed amount as modifications and repair costs will not be known until after testing of each underground tank is complete. (Funds are available from the Public Works Department operating budget for this service.)

2. \$7,020.01 to San Jose Blue for color printing and binding of 20 sets of large page utility plats for the *Engineering Division*. (Funds are available from various Water, Sewer and Recycled Water CIP projects for this purchase.)
3. \$18,398.00 to Peninsula Pump for emergency repairs to the pump column and bowl assembly at the Abbott Pump Station and emergency pump bearing repair at the Oakcreek Pump Station. (Funds are available from the Public Works Department operating budget for this emergency repair service.)
4. \$11,200.00 to Robert A Bothman, Inc. for emergency concrete repairs due to water line breaks at 25 locations. (Funds are available from the Public Works Department operating budget for these emergency repair services.)
5. \$6,327.84 to Preston Pipeline for emergency repairs to a 12", high pressure, water main on Calaveras Blvd. at Calaveras Ct. (Funds are available from the Public Works Department operating budget for this emergency repair service.)
6. \$6,141.00 to Intelligent Technologies and Service to provide annual inspections and preventive maintenance of fire sprinkler systems for the Police/Public Works building, Community Center and the Sports Center. (Funds are available from the Public Works Department operating budget for this service.)
7. \$11,025.00 to MWH Laboratories for quarterly State mandated water quality testing and analysis for HAAS and THM in the City's drinking water supply for the Utility Maintenance Division. (Funds are available from the Public Works Department operating budget for this required service.)
8. \$5,148.00 to CJ's Police K9s for the purchase of a new police dog to fill one vacancy in the K-9 unit for the Police Department. (Funds are available from the Police Department operating budget for this purchase.)
9. \$6,386.75 to US Metering and Technology for the purchase of 120 residential water meters to replenish depleted inventory supplies for the Utility Maintenance Division. (Funds are available from the Public Works Department operating budget for this purchase.)
10. \$12,502.04 to Edward S. Walsh Co. for the purchase of 15 fire hydrants and miscellaneous hydrant repair parts to replenish depleted inventory supplies for the Utility Maintenance Division. (Funds are available from the Public Works Department capital outlay and operating budget for this purchase.)

## **PUBLIC HEARINGS**

1. **Ordinance No. 124.26**  
**Sign Ordinance**  
**Continue to May 4, 2004**

City Manager Wilson reported that staff was proposing that this item be continued in order to allow for review of the Commission action with regard to the Town Center Development. Acting Planning Manager James Lindsay said that staff did receive an appeal and staff recommended this Sign Ordinance amendment run concurrent with the appeal; the appeal was expected to be brought forward on May 4, 2004; and staff recommended the public hearing be opened and continued to May 4, 2004.

Mayor Esteves opened the public hearing and asked if anyone wished to comment. There were no requests.

MOTION to continue the public hearing to May 4, 2004.

M/S: Gomez, Livengood.

Ayes: 5

2. Acting Planning Manager Lindsay reported the Zoning Ordinance amendments before the

**Ordinance No. 38.763**  
**Zoning Ordinance**  
**(Single-Family Definition)**

Council were proposed to address some community concerns stemming from overcrowding within residential neighborhoods and would assist in assuring that homes are occupied in the manner that retains the character of the single-family neighborhoods. Mr. Lindsay displayed a matrix detailing the changes stating that under the proposed changes, occupants of single-family homes would need to share household responsibilities, jointly use common areas, and be able to access all rooms within the home unless the home contained a second family unit or borders; staff was recommending that an additional parking space be required on site for each room rented if that rent includes the cost of meals (defining under the ordinance a boarding house); staff was also requesting that the definition of a residential kitchen be enhanced to provide a clear definition that was more enforceable. Mr. Lindsay described a series of five situations where single-family dwellings could be either rented in full or in part (renting of rooms where you have independent living units, separate entrances, no access to common areas in certain areas and duplicate kitchens, situations of renting rooms with no separate entrance and access to common areas and kitchen areas, boarding houses, second family units, and garage conversions). Mr. Lindsay said staff was recommending the redefinition of how a household operates to be more consistent with State and Federal laws and an explanation of how a family would share a common area, internal access to rooms, and the sharing of responsibilities, and for a boarding house (a situation where a room is rented with meals) a parking requirement be added for each room that is rented. Mr. Lindsay further stated that the ordinance amendments would prohibit, what was currently happening in the community, the renting of rooms where people live independently of each other; the whole idea of the family unit was to live together and to operate as one unit that that was what the ordinance amendments attempted to do – to encourage more of a traditional family use. Mr. Lindsay talked about garage conversions stating that both the Community Advisory Commission (CAC) and the Planning Commission held public meetings on all of the proposed amendments and individually considered how to regulate garage conversions; the CAC recommended that garages not be allowed to be converted into living space and the Planning Commission took that consideration, took public testimony, and recommended that the regulations stay as is, which currently allows garage conversions, and the draft ordinance before the Council reflected the Planning Commission recommendation. Mr. Lindsay also reported that staff was proposing modifications to how legal notices are posted on project sites; a Negative Declaration was prepared for the Zoning Ordinance amendments; staff received no comments during the public review period and, therefore, was recommending the Council close the public hearing, adopt the Negative Declaration, waive reading beyond the title, and introduce Ordinance No. 38.763.

Vice Mayor Dixon said she noticed that the March 24 Planning Commission minutes were not included and since the vote was split (4 to 3), it would be helpful to know where the Planning Commission was coming from because it was her understanding that the Community Advisory Commission was unanimous in its decision.

Mr. Lindsay responded the minutes from the Planning Commission were unavailable for the packets but the February 25 Planning Commission minutes were provided and showed the conclusion that was reached; the CAC minutes were provided in the packets.

Vice Mayor Dixon inquired if other residents spoke during the Planning Commission meeting. Mr. Lindsay responded a number of residents spoke and the majority of them were in favor of garage conversions.

Vice Mayor Dixon commented that when she served on the Planning Commission, this issue came up and it was very difficult to tell the public that we really have our hands tied because we have to abide by a higher law which said we have no ability to determine what a family unit is; it was back again and she understood why, because there appears to be a lot of garage conversions that are not even real conversions; and she especially understood in neighborhoods where there was a parking problem. Vice Mayor Dixon called attention to the part that talked about the provision possibly being unconstitutional but there was also a statement that said reasonable accommodations and rules and asked if how far the City can go under the guise as reasonable accommodation had been looked at. Mr. Lindsay responded in

drafting the amendments, staff worked very closely with the City Attorney's office; with the Attorney's guidance, staff was able to come up with a product that meets the constitutionality test yet gives maximum authority granted so the provisions can be enforced. Vice Mayor Dixon asked for confirmation that this was only complaint driven and there wasn't a dedicated staff member going around town looking for conversions. Mr. Lindsay responded yes, there was no dedicated staff member for that; however, in traveling the community, both building inspection staff and code enforcement staff upon notice of a violation, would record it.

Councilmember Gomez inquired if this passed, under any circumstances would houses that do have separate living spaces or separate entrances be considered legal non-conforming. Mr. Lindsay responded if a house had a room and the only access to that room was from the outside and that was permitted by the City prior to the adoption of the ordinance, it would become legal non-conforming; if something happened to the house, they would have to bring the house into conformance (only in a situation where there is only external access); if there is external and internal access and not a lock condition, that would be conforming under the ordinance as proposed.

City Attorney Steve Mattas commented that if in fact it was not permitted at the time it was done, if it was an illegal addition, it would not attain the status of legal non-conforming status because it would never have held the status of legal status.

Councilmember Polanski commented that staff's recommendation on the garage conversion for the Planning Commission was different than what was being recommended tonight and asked staff to comment on staff's initial recommendation. Mr. Lindsay responded at the March Planning Commission meeting, staff recommended prohibiting full garage conversions so that garages would have to stay as garage space; what staff was doing this evening was really serving as a vehicle to the Planning Commission's recommendation; therefore, the recommendation reflected that decision. Councilmember Polanski asked what was the staff reasoning for no garage conversions. Mr. Lindsay said staff was looking for further ways to increase available parking on a site and decrease the ability to have more opportunities for overcrowding.

Councilmember Polanski said she knew there are a lot of daycare centers in homes where the garage has been converted into a daycare facility and inquired if there were rules and requirements or permitting that goes through the City and the State. Mr. Lindsay responded any daycare situation does need permitting from the State and under the proposed amendment, that could continue if it meets all of the City and Building Code standards and State standards.

Councilmember Polanski expressed concern for safety when it comes to a garage conversion because the garage is normally where the water heater, washer and dryer, and heating elements are located. Mr. Lindsay responded there was a safety issue because a garage, under the Building Code, is meant for storage of autos and the typical appliances Councilmember Polanski mentioned; when a legal garage conversion is presented to the City, it will need a building permit to ensure compliance with all health and safety codes, electrical codes, and building codes; what you find in illegal garage conversions is that typically they are not built to code and do provide a number of safety hazards.

Councilmember Livengood asked if the changes in regard to garage conversions differentiated between a family, for whatever reason, that needs more living space and expands into their garage with permits and somebody who comes in and says they want to convert their garage to rent out a room? Mr. Lindsay responded yes, the ordinance provides the differentiation but it doesn't necessarily apply to the garage; under the situation of a college student returning home and wanting to live with the family, that would operate as a single housekeeping unit; if the room or a living space within the garage were to be rented, it would need to act as a boarding house and the rent would need to include the meals and an additional parking space would need to be provided on site for that boarding situation.



Councilmember Livengood inquired of any of this in any way impact people's ability to have a roommate? Mr. Lindsay responded no, it wouldn't as long as they operate as a single housekeeping unit, share responsibilities, don't have compartmentalization within the kitchen or any of the areas, and they have internal access, which was pretty typical of a roommate situation; the other situation was if an independent living situation was to be created within the room, it would then meet the definition of a second family unit and operate in that fashion.

Councilmember Livengood asked what happens now to the care facilities, particularly the ones designed to be transitional housing for people that have been in either legal trouble or drug rehab or some form of court ordered treatment; were there any changes to the type of regulations that they have to follow or is that all preemptive by the State? Mr. Lindsay responded no, those were defined as group homes and in a transitional type of housing, these regulations do not change the regulation of group homes. Councilmember Livengood asked the reason we don't change the regulation of group homes was because we can't?

Councilmember Livengood said he gets complaints from citizens about some of those different institutions and without getting into the issue of whether they are good or bad, they do cause significant impacts on neighborhoods and parking was one of the issues, but it was his understanding that State law preempts the City on those issues and doesn't allow the City to enact any regulations that would impede a group home. City Attorney Mattas responded that was correct, in particular if you are talking about group homes with six or fewer people, which actually are required to be treated as single-family units similar to the ordinance before the Council.

Councilmember Livengood inquired if any of these regulations applied to any other zoning district other than single family. Mr. Lindsay responded staff was suggesting changes to the R2, R3, and R4 zoning districts as it relates to boarding conditions, which is the provision of meals and rent; every zoning ordinance would have similar regulations requiring a conditional use permit when you board more than three people.

Mayor Esteves asked what was the real objective of this, why was it being done, and if it was parking or something else. Mr. Lindsay said this was a first phase or first approach to dealing with the overwhelming community concern of overcrowding within the single-family neighborhoods and the City's ability to enforce that was challenged by Federal and State law; staff was trying to develop a framework in which the City can have more control and more enforceability to control the situation. Mayor Esteves inquired what was meant by overcrowding. Mr. Lindsay said he was talking about situations where the home is used beyond the intent of the single-family district, which was supposed to be one family in one home; the community was experiencing multiple situations of renting of rooms, renting of multiple rooms, and the parking impact that results on the streets, in the driveways, and everything else. Mayor Esteves said parking was one of the negative effects but was it more of a safety issue with more people inside the house or of conforming to zoning regulations of being a single-family residential. Mr. Lindsay said he thought it was yes to retaining the character of the single-family neighborhood, yes to the safety of the occupants in the home, and yes to the parking impact it creates on the streets.

Mayor Esteves asked what was the legal definition of single-family residential. Mr. Lindsay responded the current definition in the ordinance, unfortunately, was not enforceable. Mayor Esteves asked how was it being defined so it becomes enforceable? Mr. Lindsay said it was being defined so it is consistent with State and Federal law and by making it consistent so that it can be enforced. Mayor Esteves asked for a statement of how it should be defined. City Attorney Mattas explained the definition as proposed was a definition that had been tested already in a San Jose ordinance but was not a published opinion, but it had been tested up to the court of appeals and related to the household being the functional equivalent of a traditional family whose members are non-transient, operating as a single unit of people, or a single family unit within the household, so that was why Mr. Lindsay made repeated comments of the fact that everyone have equal access to various parts of the house; obviously, if you are a roommate situation, you may have an understanding amongst roommates that you don't go in each others bedrooms, but as to all of the common areas, they are all equally

accessible so that they don't have separate doors or separate kitchenettes, which would then create them into *separately operated functions* of the household. Mr. Mattas further explained the State and Federal laws were very clear both in terms of our ability to regulate what one might call a *traditional family*, parents and kids, and we can't limit the household occupancies to that type of definition, you have to instead look and see how the house operates as a single unit, and we call it a single-family unit, but in fact, it is often composed of members who are not family members.

Mayor Esteves expressed concern for the effectiveness of the proposal, he agreed with the intent, but if it was to be effective, enforceable, and not subject to lawsuits and neighbors fighting one another, it had to be more structured. Mayor Esteves asked what happens with families who use the garage not for parking but for storage, or a play area, or for whatever purpose but not for parking – would that be illegal. Mr. Lindsay responded staff was not recommending any changes to how a garage is used. Mayor Esteves commented that we cannot even require two parking spaces for each house or really ensure that it would be used for parking. Mr. Lindsay said two parking spaces can be provided on the driveway; each single-family home, when it is built, is typically provided a two-car garage and a driveway apron and due to the front setback requirements, you end up with the ability to park two cars on the driveway without using your garage. Mayor Esteves commented that it is not an effective control in the first place. Mayor Esteves said he wanted to go back to the issue of a boarder, of someone renting out rooms but saying they are roommates, and asked how staff would distinguish between boarders and roommates when the owner says they are not renting but are roommates (how would that conflict be settled)? Mr. Lindsay described a hypothetical situation of a code enforcement official from the City visiting the location under today's ordinance and how it would apply under the *proposed ordinance*; under the existing ordinance, there would be no provisions for enforcement because the current code cannot be enforced; under the proposed regulations, the *code enforcement official* could then see and question the person who is renting, inquire about the kinds of activities, how they relate, and make a conclusion of *whether or not the renters are living in the unit as a single housekeeping unit* or if the rent covers the meals, and what was their relationship; if the relationship, through documentation and interviews, was determined to be independent, then that would be a violation of the Municipal Code as it was being proposed; if they are operating as a single housekeeping unit and sharing in all of the costs, then that would be in conformance with the regulations.

Mayor Esteves commented that if you are a smart landlord, you can arrange as if you are living together and asked how that would be controlled. City Attorney Mattas responded he thought you have to come to it from the perspective that you have very limited authority under State and Federal law, the present ordinance was not enforceable and was unconstitutional, and so the steps that were being proposed provide some additional leeway; somebody who wants to avoid any regulatory authority on this issue other than simple occupancy limitations can structure their rental to accomplish that by just simply not calling them boarders; if, however, you have people who want to have independent living circumstances, then you can regulate them and they will very quickly become boarder situations.

Mayor Esteves said his real question was about the kitchen and asked for confirmation that only one kitchen is allowed in a single-family residential home. Mr. Lindsay responded yes, currently the definition of a dwelling unit within the Zoning Code was one kitchen; the modifications proposed would expand that to make sure it was clear throughout the ordinance that was the intent. Mayor Esteves said that right now two kitchens would not be approved so the proposal was really not needed because we already have this right now. Mr. Lindsay said we have it but, unfortunately, within the Zoning Ordinance there are multiple definitions for all the different scenarios of living situations. Mayor Esteves said he was talking about kitchens only. Mr. Lindsay said what was proposed was to introduce that requirement into each of the definitions so people, or a lay person reading the ordinance, would only have to go to one location.

Mayor Esteves said the second issue was an external entrance, which wasn't allowed to a single-family residence that is entirely separate with a divider and asked if you see a plan where you see three compartments with separate entrances, it would not be approved? Mr. Lindsay responded no. Mayor Esteves commented that we already have it covered, too. Mr. Lindsay said it would not be approved because it would not be operating as a single-family home right now; what staff was looking for was ordinance authority to be able to say if you are going to do this, you will have to do this under these conditions, and so what we are doing is providing the framework by which to review the request for the closed off situation.

Mayor Esteves expressed concern for fixing something that was not broken; if there were violations that were approved officially, maybe it has to be made clearer and more explicit, but his question was from all the houses that have been approved (single-family homes), were there houses with compartmentalized entrances and more than one kitchen that have been approved because the ordinance was not clear. Mr. Lindsay responded the situation does exist within the community where people are living in rooms that have external access. Mayor Esteves asked for clarification that the City has approved house plans that are compartmentalized or have more than one kitchen, he was not talking about living arrangements, and was trying to look to see if we need to strengthen the ordinance. Mr. Lindsay said we do need to strengthen the ordinance because it doesn't have these explicit standards, and it needs to be strengthened to be more enforceable. Mayor Esteves said he understood but if we have approved a lot already, a loophole because we don't have a very strong ordinance, and that was why he was questioning if a lot of this went through the cracks. Mr. Lindsay said staff had done everything they could to prevent them from falling through the cracks by the implication of what they were trying to do but if challenged, staff preferred to have it very explicit and clear within the ordinance. Mayor Esteves said he was not sure how to solve the parking issue with all of these solutions; it was confusing because a family could have 10 cars.

Vice Mayor Dixon commented that if someone wants to come up with a creative way to have a kitchen, they are going to do it; over the years there have been complaints, especially with bigger homes where families were living independent of each other and were actually cooking in their rooms, so it does happen. Vice Mayor Dixon said her concern went back to the parking, reflected on her own neighborhood (Parktown) where the streets were built narrower as a trade-off for more parks, now garages were being used for other things, there was no way of telling how many people live in a house, and she had received complaints from Parktown residents where one person said he counted 10 to 14 cars and there was no place on his street to have anybody come by.

Councilmember Livengood said he was not feeling as good about this anymore; after hearing the Mayor's questions and the responses, he was less comfortable now; what concerned him a little was that the question got down to how does the staff find out about all this and the answer was we go into the house or we phone them or contact them somehow and ask them very specific questions. Councilmember Livengood further stated that made him a little uneasy about getting into people's lives and the way they live; he understood that staff was trying to strengthen the ordinance so that the City has a little more of an ability to go in and deal with aggravated situations but feared that people would read that this new ordinance is adopted and they are going to start calling code enforcement to report on living situations which would trigger a meeting and a lot of sensitive questions about the way people live. Councilmember Livengood said he was getting a little more nervous about this, he understood what staff was trying to do and thought it was worthy and something that should be looked at, but he was really nervous now about what this ordinance could produce and what people's expectations might be of what can and cannot be done.

Mr. Lindsay commented that a lot of the regulations, and he thought the Mayor hit on this, relate to the physical environment; when a code official goes and visits an area, if they immediately look at the kitchen and see there are locks on the cabinets with names on them, they can immediately draw a conclusion of compartmentalization, or they can see that when there is one living room, there's one kitchen and nobody else seems to have a kitchen or living

room, he thought there was a way that a City official could draw some conclusions without being too evasive.

Councilmember Livengood asked what do you do when somebody says thanks for asking, but you are not coming in my house and refuses access. City Attorney Mattas responded the City would be required to follow a procedure under California law for an inspection warrant; if a request to view or go inside the house was denied, we would have to go to court to get an inspection warrant granted, it would have to be based on reasonable cause, and it was a common procedure in code enforcement action throughout all cities in California. Councilmember Livengood inquired if Milpitas has done that on a regular basis. City Attorney Mattas responded Milpitas has not done that in particular, at least within his tenure with the City; however, other cities he works with do it on a fairly regular basis.

Mayor Esteves inquired about the liability of the City. Mr. Mattas responded if you have inspection warrants issued, your exposure to liability is quite small at most presuming the enforcement is done in a non-discriminatory manner and you are always acting under reasonable cause.

Councilmember Polanski inquired if there was any liability now if there is an illegal conversion of a garage or unit, an illegal kitchen, and something happens – there's a fire and it spreads to the neighbors – does the City have any liability. Mr. Mattas responded if it is an illegal activity, we would not be liable for it.

Councilmember Polanski said the CAC had a lot of discussion on garage conversions, on conversions in San Jose where they meet no codes and there had been serious accidents and death, and the CAC did not want something like that to happen here. Councilmember Polanski further stated the CAC recommendation was unanimous not to allow garage conversions; if there were no garage conversions, it would free up parking spaces on the street; and asked if, under the current ordinance, a resident calls to report a dwelling unit next door with separate entrances and people coming and going from the separate entrances all hours of the day and night, what ability does the City have now? Mr. Lindsay responded there was the ability to enforce and staff would continue to do so with illegal construction; however, staff also receives calls of potential overcrowding or renting of multiple rooms but has no ability to respond or enforce; and with the proposed changes, there would be tools to respond to those complaints.

Mayor Esteves said he thought the real objective of this issue was parking and thought the wrong solution was being provided to a different problem; parking was the issue and it was not being addressed; he didn't think neighbors were bothered if four people are living in the house or two families as long as they don't bother them except for the parking. Mayor Esteves further stated this was his own assessment and asked if we are solving the right problem or are we just going around the bush? Mr. Lindsay said he really saw this as a first phase addressing this problem, which was overcrowding and the resulting parking issues; the CAC is continuing to work on the parking issue through its subcommittee; so through this work with the CAC, there may be additional recommendations that come before the Council on ways to address the parking situation within the single-family neighborhood.

Mayor Esteves said he believed the issue was more the parking because it was more external and wanted to go back and look at the real problems and have a real solution because solving the wrong problem would put the City into more problems. City Attorney Mattas commented that there was a practical issue here in terms of overcrowding and parking; there was a real issue with the ordinance right now because it is unconstitutional. Mr. Mattas said what this ordinance (before the Council) does was really just that first step; if there were certain elements that the Council was uncomfortable with, they could back off but a definition was needed that was a defensible definition that goes also to Mr. Lindsay's point that people want to be able to look at the ordinance and understand what is acceptable; and if they look at the City's ordinance right now, and in fact if they are not a lawyer or not trained in understanding

what the restrictions are, they may think that it actually means something else, which can cause confusion in addition to the overcrowding and parking issue.

Mayor Esteves opened the public hearing and invited comments.

Bill Ferguson, Milpitas, said if there was one part that is unconstitutional, it was easy to change that one part and not do all of these. Mr. Ferguson thanked the Mayor for bringing out the real issues and asking the hard questions. Mr. Ferguson commented on the hypothetical situation Mr. Lindsay used regarding roommates and the kinds of questions that might be asked and stated he was opposed to this; the bigger problem was housing and the cost of housing, which was the biggest reason to leave the area; he thought the Council should support people coming up with creative ways to solve the housing problem in their own way; one of the ways was sharing the house, renting rooms, having roommates; and he was opposed to the ordinance because he thought it made it harder to do all that. Mr. Ferguson said he thought it also tried to get into all of these definitions of what a family is, that was just way too much control, he knew there were trade-offs in lowering the cost of housing and then trying to keep the so called single-family housing and trying to keep that, and he was in favor of a lower cost housing but not all of this.

Elsa Rodriguez, Milpitas, said she thought the time was wrong, there were no jobs in the Bay Area, there were several people in her neighborhood who had lost their jobs and were living with their neighbors, she didn't want to pay tax money on something like this, and at this moment the City of Milpitas doesn't have the money.

Rob Means, Milpitas said he had a lot of questions but not enough time to ask them, overcrowding was a regional or national trend, asked if residents complain about overcrowding or too many cars, he felt it was a national trend because of the economic situation and the housing bubble we're having. Mr. Means further stated he thought people were really complaining about too many cars; thought it was about the parking; the parking, the cars, and transportation should be addressed; and there wasn't enough housing in this Valley. Mr. Means said there was a major problem in the Parktown area and if we really wanted to solve the parking problem, limit each household to three cars and if there's another car registered to that household, tax it starting at \$1,000 a year; if you really want to get serious about it, start with some number and keep working it up until the problem gets diminished enough so you can deal with it.

MOTION to close the public hearing.

M/S: Livengood, Polanski.

Ayes: 5

Councilmember Polanski said she knew people were saying it was just a parking issue, but she also believed it was a safety issue; she didn't believe this ordinance as proposed would negate anything that either Mr. Ferguson or Ms. Rodriguez brought up; it still allows the renting of rooms and it doesn't say you have to eat together. Councilmember Polanski further stated where she had a real problem was with the safety issue, she had no problem adding on to property so you can rent out more rooms; however, she believed that a garage was meant to house a car; she knew there were instances in the City where people have gotten out of their car in the driveway and have been attacked while walking to their front door, so she believed that if you have a garage and you have the ability to park in it, it definitely protects. Councilmember Polanski also said she believed there was a problem with parking and knew that the CAC was still working on addressing that; the ordinance just gives City staff another tool, but it does not disallow the ability to rent out rooms and utilize those common areas; she feared that some of these single family dwelling units would take a bedroom and a whole family moves in there and they have their little stove and they're cooking their meals in there and a fire starts. Councilmember Polanski commented that she would not be very pleased if her next-door neighbors had all of these different units with little kitchenettes and there was a fire and it affected her.

Vice Mayor Dixon said she agreed with a lot of what Councilmember Polanski said; it really does come down to safety and the inconvenience because of the parking; and she looked at this as being three-prong: (1) the issue of defining what constitutes a family unit; (2) garage conversions (something that needs more time, further discussion, more public input because it does ultimately change a neighborhood); and (3) unregulated parking (there has to be a mechanism for a portion of a neighborhood to come to the City to complain about over parking). Vice Mayor Dixon asked the City Attorney, with respect to the unconstitutionality and the fact that it violates both Federal and State law, if this was being done because it had been brought to us by a personal complaint. City Attorney Mattas responded no, the current ordinance was adopted back in 1955 and the specific language has been found to be unconstitutional in other decided cases; this was brought forward because the Council had actually asked for an opinion from his office on the issue. Vice Mayor Dixon commented that to cover all the concerns for the Mayor, the Council either accepts it as is tonight or the Council could tweak the wording to make it constitutional.

City Attorney Mattas said he was the one who created the impression of tweaking or modifying it; the Council talked about the enforceability of the ordinance, the types of questions that might be asked, and all he was saying to that effect was that the ordinance before the Council was what his office had recommended to the Council. Mr. Mattas further stated if the Council was concerned, there was language in the proposed ordinance that could be taken out that would just give fewer issues upon which to make a determination that, in fact, there was a compartmentalization living arrangement that might otherwise require an additional use permit as a boarding house, specifically, the definition in the proposed ordinance under section 2.69-1.5, the definition of a single housekeeping unit that reads "and shared housing activities and responsibilities such as meals, chores, and expenses"; those were characteristics that would be looked at to determine whether or not it was compartmentalized or whether it was actually operating as a single housing unit; if the Council preferred, that first sentence could actually stop right at the end of the third line where it talks about use of common areas which are not compartmentalized such as locked cabinets or doors.

Vice Mayor Dixon said it seemed more prudent just to correct what needs to be corrected, try it out for awhile, see what happens in the community, and the Council can always go back and amend it.

Mayor Esteves commented that we have to make our current ordinance constitutional in its language. Mr. Mattas said staff was suggesting that you have a definition of a single housekeeping unit in the ordinance that allows the public to understand what the standard is and meets constitutional requirements.

Councilmember Livengood commented that now as he understood it, the only thing being dealt with was the constitutionality issue. Mayor Esteves responded yes, and his reason was that he thought we are solving the wrong problem, the problem was parking and even this language was not effective. Councilmember Livengood asked what language changes needed to be made to meet the constitutional test. City Attorney Mattas responded the Council had a lot of discussion about the definition of single housekeeping unit; the ordinance also addresses noticing requirements, which had not been raised as an issue by the Council or the public; the other changes, setting aside for purposes of discussion anything related to garage conversions (which was a policy issue for the Council to decide), relate to the definition of family and housekeeping unit; if you change section 2.69-1.5 (as previously discussed), then the remaining changes really help to clarify what is really meant by that. Mr. Lindsay added that the majority of the changes were there to add clarity to the homeowner, to complement the definition of housekeeping unit, and the addition of regulations was when it came to the parking standards for boarding houses (to clarify what a boarding house was so it was very clear in the ordinance and then adding a parking regulation that currently does not exist for boarding houses).

Councilmember Polanski asked for clarification that garage conversions would still be allowed. Mr. Lindsay responded the ordinance before suggested no changes to the current

regulations, which allows them. Councilmember Polanski said she disagreed with that; however, she agreed with the rest of the ordinance, as modified by the City Attorney (section 2.69-1.5) and then bringing back for discussion garage conversions at another time and the parking, which the CAC is working on and will be making recommendations to the Council.

MOTION to adopt the Negative Declaration (EIA No. EA2004-1).

M/S: Polanski, Livengood.

Ayes: 5

City Attorney Mattas advised that the next part contained two components; one was to waive reading and to introduce the ordinance before the Council with the deletion of the fourth line of section 2.69-1.5 so that the first sentence would end with the word "doors," otherwise the ordinance would remain exactly as it was and then there was separate direction to come back with further consideration of parking and garage conversions.

MOTION to waive reading beyond the title and introduce Ordinance No. 38.763, as modified (section 2.69-1.5) so that the first sentence ends with the word "doors".

M/S: Polanski, Dixon.

City Attorney Mattas advised that with respect to the issue of garage conversions, the Council can direct that it wants further discussion on that; the issue has already gone through the Planning Commission and was before the Council; if the Council wanted to act on it, it could do that tonight; if the Council wants to get further public input before taking action on garage conversions, that was appropriate as well; if it is brought back, it would go back through the process again, the Planning Commission again would have advice on it, and a public hearing before the Council for adoption. Councilmember Polanski said she was getting a sense from the Council that they weren't ready to make a decision on that; she knew that there was a unanimous recommendation from the CAC, to which she was the liaison, against garage conversions, but she also knew at the Planning Commission it was a 4 to 3 vote; she believed this was an area that the Council needed to get additional input from the public and both bodies.

Vice Mayor Dixon, the second to the motion, commented that part of the difficulty she had was that it was unanimous from the CAC and she had their minutes; she didn't have the Planning Commission dialogue and was being asked to make a decision based on comments here and there but it would be very helpful to have the minutes; she didn't know if there was merit in that but she did want that information to come back to the Council so the Council would have more in-depth information.

City Attorney Mattas reminded the Council there was a motion and second on the floor; if the Council believed it would be helpful for the Council to receive a report which included the minutes, information of how you enforce garage conversions right now, that could be received as a report and at that point decide whether or not you want to direct it back to the CAC or the Planning Commission.

Councilmember Livengood said he agreed with getting more information; however, he was not sure if asking the CAC to rehash this and the Planning Commission was going to produce much of a value; he thought like Vice Mayor Dixon said, let's get the minutes from the Planning Commission meeting and we can ask questions that night and make a decision.

Councilmember Polanski, the maker of the motion, said she was comfortable with that direction. Vice Mayor Dixon, the second to the motion, also agreed.

City Attorney Mattas restated the Motion to waive reading of Ordinance No. 38.763 as amended to delete the fourth line of section 2.69-1.5 and to provide the direction to bring the garage conversion information back to the Council along with the minutes and the parking issues to be referred back as the direction of the Council this evening.

Mayor Esteves asked if the requirement of one parking space for each boarder was taken out. Mr. Mattas responded no, that was part of the motion before the Council; it stays in. Councilmember Polanski commented that boarder was different than a renter.

Mr. Mattas said if there were any negative votes, there would need to be a separate motion on the waiving of the reading beyond the title.

VOTE ON MOTION: Ayes: 4 Noes: 1 (Esteves)

MOTION to waive the reading beyond the title of Ordinance No. 38.763.

MS: Livengood, Gomez. Ayes: 5

MOTION to introduce Ordinance No. 38.763 with the amendment to section 2.69-1.5 (this motion to introduce supercedes the earlier motion which received a 4/1 vote).

M/S: Polanski, Livengood. Ayes: 4 Noes: 1 (Esteves)

Acting Planning Manager James Lindsay read the title of Ordinance No. 38.763 amending various sections of Chapter 10, title XI of the Milpitas Municipal Code relating to regulation of single-family residential districts and procedures for providing public notice.

#### **RECESS**

Mayor Esteves recessed the City Council meeting at 9:35 p.m. The City Council meeting reconvened at 9:46 p.m.

#### **JOINT REDEVELOPMENT AGENCY AND CITY COUNCIL MEETING**

##### **RA1. CALL TO ORDER**

Mayor Esteves called to order the regular meeting of the Milpitas Redevelopment Agency, meeting jointly with the City Council, at 9:46 p.m.

##### **RA2. ROLL CALL**

Present were Mayor Esteves, Vice Mayor Dixon, and Agency/Councilmembers Gomez, Livengood and Polanski.

##### **RA3. MINUTES**

MOTION to approve the Redevelopment Agency minutes of March 16, 2004, including joint meeting with the City Council, as submitted.

M/S: Gomez, Livengood. Ayes: 5

##### **RA4. AGENDA**

MOTION to approve the Agenda and Consent Calendar as submitted.

M/S: Livengood, Polanski. Ayes: 5

##### **\*RA5. LIBRARY RFP MIDTOWN RFP**

Approved the Request for Proposals for the new Library and directed staff to issue the RFP; approved the Request for Proposals for the new Midtown parking structure and directed staff to issue the RFP.

##### **\*RA6. CIVIC CENTER PROJECT**

Approved one change order and three purchase orders.

##### **\*RA7. AGREEMENT FOR REVIEW OF RDA FINANCIAL PRACTICES**

Authorized the Executive Director to execute an agreement with Stradling Yocca Carlson & Rauth to perform work reviewing Redevelopment financial instruments and techniques of incurring and sustaining indebtedness and other related Redevelopment issues.

##### **\*RA8. PROPERTY APPRAISALS**

Authorized the Executive Director/City Manager to enter into an agreement with Dana Property to prepare appraisals for certain real property in an amount not to exceed \$37,000.



**RA9.  
ADJOURNMENT**

There being no further Redevelopment Agency business, Mayor Esteves adjourned the Redevelopment Agency meeting at 9:47 p.m.

The City Council meeting continued.

**REPORTS OF OFFICERS & BOARDS**

**3.  
Cesar Chavez Holiday**

Mayor Esteves placed this item on the agenda and shared highlights of Cesar Chavez's life commenting that he was a farm worker leader of organized labor, considered to be a great humanitarian, the founder of the National Farm Workers Association, which merged later to become the United Farm Workers Union, and read a few quotes attributed to Cesar Chavez and a few paragraphs from a biography on Cesar Chavez. Mayor Esteves said he considered Cesar Chavez a great man who was willing to fight for what was right and was willing to sacrifice his own life so that the unions could continue. Mayor Esteves further stated he was very honored to recommend the City honor him with a paid City holiday but that it didn't go free, there was a price and from the information provided to the Council, the daily payroll rate for one day was approximately \$235,000; the actual out-of-pocket cost was 6 percent paid to the public safety officers or any other emergency workers that would be required on that day. Mayor Esteves said it was worth having the holiday and the greatness of Cesar Chavez really was a lot more than the expense or costs we might incur.

Councilmember Livengood said he preferred not to get into the pros and cons but to wait until the committee that the Council directed to go back and look at the different options for both Dr. King and Cesar Chavez has a chance to finish its work; he was not going to vote against the Mayor's motion but he was not going to vote for it either; the committee was close to issuing its recommendations and he preferred to wait until they get the information they had requested and then look at the pros and cons and costs associated; he thought we need to let them finish their job; it was not a pressing matter in terms of the date of the holiday since it was almost a year away; those 8 or 9 people serving on the committee have an expectation that they are going to make a recommendation to the Council and he would like to finish that; there was a meeting with them on the 22<sup>nd</sup> that would be the last meeting; so by the first meeting in May the Council will have a recommendation about both Martin Luther King and Cesar Chavez.

Mayor Esteves said he was aware of the committee but it was his understanding the committee was to consider naming streets or buildings, etc. to honor both Martin Luther King and Cesar Chavez; the holiday issue should not be a subject of discussion, everyone would save time, and it was mandatory to him that we honor him with a holiday, noting that the State, County, and Superior Court and City of San Jose has considered it a holiday, so to him it was not really subject to discussion.

Councilmember Gomez said he was not going to argue with anything that had been brought forward; he works for San Jose and the Mayor for the County and they both enjoy that holiday; he, as a Hispanic/American understood all the contributions Cesar Chavez has made to our society; but he also wanted to be respectful to the committee and would like to find out what their recommendation is before moving forward with anything.

Councilmember Polanski said she, too, was looking forward to the committee's recommendation on both Martin Luther King and Cesar Chavez; her concern was more budgetary and she would much prefer to have this looked at as part of the budget process. Councilmember Polanski further stated it always concerned her when the State or Federal Government issues another holiday and the cost is borne by the citizens of the community; when Santa Clara County looked at making this a holiday, it was a major impact and they were facing major budgetary constraints; so she would prefer to wait until the budget process because she was concerned about the services it would impact.

Mayor Esteves said to honor a great man was to really honor a great man, it was not the money being talked about because the budget wasn't being increased that amount, and as far

as he was concerned, it should not be a subject of discussion and he wanted to be decisive because of the values imparted by Cesar Chavez.

Vice Mayor Dixon said she knew of no one in dealing with a civil pioneer that comes close to him as to his direct impact in this valley; however, her concern was that the date had already been missed; she would like to get to the budget process because in looking at the preliminary information, out of the almost \$235,000, more than 50 percent goes to Police and Fire; she would like to have (for the budget hearings) an actual breakdown of how many police and fire are on that particular day. Vice Mayor Dixon said there was nothing to preclude the Council from going forward and proclaiming March 31<sup>st</sup> in honor of Cesar Chavez and still come back at the budget process; as far as the committee, the Council asked the committee to look at ways of honoring and naming but didn't talk about a paid holiday; and there were also negotiating factors with all the unions that the Council needed to be respectful of.

MOTION to honor Cesar Chavez by declaring March 31<sup>st</sup> as Cesar Chavez Day in the City of Milpitas and to look at the actual budgetary impacts during the budget process and the meet and confer issues with the labor unions for a paid holiday.

M/S: Polanski, Livengood.

Ayes: 5

**5.  
Donation Request**

Mayor Esteves placed this item on the agenda and asked that the Council approve a \$100 contribution to the Rancho Milpitas Middle School to help support the School Yearbook. Mayor Esteves said this was in response to a request from the students after someone broke into the school and took the money they had raised, along with two cameras; it was learned that they had received funds to cover their loss and the small amount from the City was to support the Yearbook Project of the students and at the same time say that they are doing an important project.

MOTION to approve a contribution of \$100 to the Rancho Milpitas Middle School Yearbook Project from the Council's Community Promotions account.

M/S: Gomez, Polanski.

Ayes: 5

**7.  
Economic Development Plan**

Principal Analyst Cindy Maxwell briefly reported that in November 2003, the Council approved a request from the Economic Development Commission for outside professional assistance to prepare a comprehensive Economic Development Plan; six firms responded to the City's request for proposal, the proposals were reviewed and the top consultants interviewed, and the firm of Applied Development Economics was recommended to prepare the Plan at a not-to-exceed amount of \$99,890, including a 10 percent contingency.

MOTION to approve the selection of Applied Development Economics as the consultant to prepare the Economic Development Plan and authorize the City Manager to execute the contract, subject to approval as to form by the City Attorney.

M/S: Polanski, Gomez.

Ayes: 5

**NEW BUSINESS**

**9.  
Ethics Stakeholder Report**

Acting Planning Director Tambri Heyden presented a summary of the Ethics Project to date leading up to the Stakeholder Report, which was before the Council. Ms. Heyden reported the survey was sent to a random sample of 1,200 Milpitas households and since only 100 surveys were completed by the March 22 deadline, the date was extended to March 28 and a total of 187 completed surveys were received. Ms. Heyden reviewed the Strengths outlined in the report and the questions asked along with the responses. Ms. Heyden also reviewed Weaknesses outlined in the report along with Opportunities to improve public trust and employee morale, Threats that included the concern that nothing will change or that an ethics code will give false hopes, and Conclusions that leaders need separate politics from the stable and efficient management of the City, need to assess the impact of patterns of

Councilmembers disagreeing with each other on Tuesday night and playing it out in the newspaper, and to guard against threats by carrying out the recently adopted Code Plan. Ms. Heyden reviewed the next tasks reporting that one workshop had been concluded and three were left and on May 5, the Community Advisory Commission was expected to approve the draft Code, guidelines, and implementation plan and they would be coming on to the Council for approval. Ms. Heyden said the action before the Council tonight was to approve the Stakeholder Report and she and Dr. Shanks were available for questions.

Councilmember Livengood asked how many citizens responded to the survey. Dr. Shanks responded a total of 187 were received and 184 were valid. Councilmember Livengood said he thought that was a small number for the size of the City and inquired about the demographics. Dr. Shanks said he thought it was a pretty representative group of people, commented on the ethnic mix, male to female ratio (60/40), number of years living in Milpitas (a range of 2 to 49 years with 14 years the average), and the Council would be receiving a full report on this. Dr. Shanks commented that the report was still within a 3-1/2 percentage points of error on either side, and he felt the numbers could be trusted.

Mayor Esteves inquired how many surveys were sent out. Dr. Shanks responded 1,200 households were invited to respond with a limit of two surveys per household. Mayor Esteves asked Dr. Shanks based on statistical knowledge, how representative was this compared to the total population. Dr. Shanks responded he was 95 percent sure (a confidence level of 95 percent) what was being represented was accurate within 3 1/2 percentage points on either side; the results looked pretty representative to him, and it seemed to be a valid survey.

Vice Mayor Dixon commented on the recent loss of Measure B (County Library Measure) stating that out of nine cities, they polled between 400 and 600 people so looking at the ethics survey results, they looked higher. Vice Mayor Dixon further commented that the survey was lengthy, she didn't see any benefit if it were to go out again right now because it's tax season, and she was quite pleased with 184.

Councilmember Polanski said she was pleased as well and was also pleased that 44 interviews were accomplished. Councilmember Polanski also commented that there were a lot of different people at the first workshop so it looked like a good cross-section of people were participating. Councilmember Polanski said she thought a lot of the information was interesting, was very pleased with the process, thought the CAC, staff, and the Steering Committee have been very pleased with the process, and was pleased with the workshop.

**MOTION** to approve the Ethics Stakeholder Report.

M/S: Dixon, Polanski.

Ayes: 5

**12.  
Staffing Changes to Support  
CIP Special Projects**

City Manager Wilson reported that City Engineer Mike McNeely and Assistant City Engineer Greg Armendariz would present this item. Assistant City Engineer Armendariz began by reviewing the Capital Improvement Program Goals and Objectives and reported that for the 17 Midtown Improvement Projects, a new Special Projects Section was being established using some existing personnel, the addition of some new positions, and the contracting of specialized consultant services with all of the funding for staff and consultants from restricted capital project monies, with no impact on the City's General Fund. Mr. Armendariz said the recommended additional positions were one Associate Civil engineer and two Assistant Civil Engineers; in addition, filling of an existing vacant Accountant in the Finance Department to help support the Capital Improvement Program was requested.

City Engineer Mike McNeely reported upon the retirement of the Traffic Engineer, staff was looking at the responsibilities of the Traffic Section and with the recent long term disability of another Traffic Section employee, staff was recommending under filling the vacant Traffic Engineer position with a new Principal Transportation Planner (funded 90 percent from the General Fund) and continue using consultant expertise as needed.

Mayor Esteves reported the Council CIP Subcommittee (the Mayor and Councilmember Polanski) had reviewed the proposal and were supportive.

Vice Mayor Dixon expressed her support for the proposal commenting that Milpitas was one of the few cities in a position to move forward with projects and it was all to the benefit of the community.

Councilmember Gomez inquired what another Transportation Planner was being proposed and how was it different. Mr. McNeely responded because of limited money, this would provide the ability to develop that expertise and a Traffic Engineer in-house. Mayor Esteves inquired if by doing that, will it fill the gap left by the Traffic Engineer. Mr. McNeely responded that this was a highly qualified position and felt the market is out there to attract a qualified person.

Councilmember Polanski commented that the Subcommittee did meet on the CIP Projects and she was very supportive of these positions. Councilmember Polanski further commented that only three of the projects in the Midtown were highlighted tonight but an amazing amount of work has been accomplished this year to meet the CIP goals and a very aggressive program was planned for next year so it was very important to have these positions.

Mayor Esteves said he thought we should be more serious about the CIP Projects, they also include water sewer and parks and all of these projects impact our residents, and he was very happy as long as the objectives are kept and the goals are completed.

MOTION to approve three new engineering positions (one Associate Civil Engineer and two Assistant Civil Engineers) and the filling of the vacant Accountant position for the Capital Improvement Program and approve the new Principal Transportation Planner position.

M/S: Polanski, Dixon.

Ayes: 5

## **ORDINANCE**

### **13. Ordinance No. 43.200 Traffic Code Introduce**

City Engineer Mike McNeely reported that based on staff's engineering study, the ordinance before the Council would amend the Traffic Code to provide for traffic control to add North Park Victoria Drive, from Kirkwall Place to the north City limits, to the speed survey list enabling the use of radar for enforcement of a 25 mph speed.

City Attorney Mattas read the title of Ordinance No. 43.200 amending Chapter 100, Title V of the Milpitas Municipal Code amending the Traffic Code.

MOTION to waive the reading beyond the title.

M/S: Polanski, Dixon.

Ayes: 5

MOTION to introduce Ordinance No. 43.200.

M/S: Polanski, Livengood.

Ayes: 5

## **ADJOURNMENT**

There being no further City Council business, Mayor Esteves adjourned the City Council meeting at 10:49 p.m.

Gail Blalock  
City Clerk